

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte UDO SCHUTZ

Appeal No. 97-4168
Application 08/348,890¹

ON BRIEF

Before CALVERT, Administrative Patent Judge,
McCANDLISH, Senior Administrative Patent Judge, and
FRANKFORT, Administrative Patent Judge.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claims 7 through 9 as amended subsequent to the final rejection in a paper filed January 14, 1997 (Paper No. 12). Claims 7 through 9 are all of the claims remaining in the application, claims 1 through 6 having been canceled.

¹Application for patent filed November 25, 1994.

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Appellant's invention is a sheet metal container specifically designed for the transport and storage of corrosive liquids. Independent claim 7 is representative of the subject matter on appeal and a copy of that claim appears in the Appendix to appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Mineo	4,316,318	Feb. 23, 1982
Hawkins et al. (Hawkins)	4,896,782	Jan. 30, 1990
Büdenbender (Büdenbender '576)	5,052,576	Oct. 01, 1991

Claims 7 and 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Büdenbender '576 in view of Hawkins.

Claim 9 stands rejected under 35 U.S.C. § 103 as being unpatentable over Büdenbender '576 in view of Hawkins as applied to claim 7 above, and further in view of Mineo.²

² As noted on page 5 of the examiner's answer, the rejection of claims 7 through 9 based on Mineo, Smith and Hawkins found on pages 4 and 5 of the final rejection (Paper No. 11) has been withdrawn by the examiner, and is therefore not before us.

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Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the examiner's answer (Paper No. 16, mailed June 10, 1997) for the examiner's reasoning in support of the rejections, and to appellant's brief (Paper No. 15, filed April 18, 1997) for appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

Turning first to the examiner's rejection of claims 7 and 8 under 35 U.S.C. § 103, we note that Büdenbender '576 discloses a sheet metal container with a cap-type closure wherein the container has a neck region (e.g., 22, 23 of Fig. 10) like that set forth in appellant's claim 7 on appeal. Figures 14-20 of

Büdenbender '576 depict the types of caps that may be used with the neck region/tube stub therein. As can be seen in Figures 14-20, the caps of Büdenbender '576 are made of metal and therefore differ from appellant's claimed subject matter which recites a plastic sealing cap with a disk-shaped metal insert disposed therein. Hawkins discloses a closure (e.g., Figs. 7-9) designed to provide a hermetic seal for food or medications containers. The cap portion (56) of the closure is formed of plastic, while an insert (54) therein is formed of metal. In the examiner's opinion (answer, page 4), it would have been obvious to one of ordinary skill in the art

to modify the closure of Büdenbender in view of Hawkins et al. to provide a metal insert in said cap to protect the contents of the container and an annular projection extending into the neck and an annular groove disposed between an outer edge of the insert and said annular projection with a resiliently deformable gasket in the annular groove to provide a leakproof seal for the container.

Even if we assume that the combination as posited by the examiner is appropriate, a position strongly disputed by appellant, we note that the container resulting therefrom would not be that which is set forth in appellant's claim 7 on appeal.

As stated, the examiner's combination would result in a metal cap (as seen in Figures 14-20 of Büdenbender '576) with a metal insert of the type seen in Hawkins. Appellant's independent claim 7 specifically requires "a plastic sealing cap in screw-threaded engagement with the screw threads of the ring" (emphasis added) and that the plastic sealing cap further have a disk-shaped metal insert "for protecting said sealing cap against corrosive liquid in said container." Not only is there no teaching in the applied references of appellant's problem and solution concerning corrosive liquids in the container contacting a plastic sealing cap (specification, page 3), but we also fail to see any teaching, suggestion or incentive in the applied references for making the metal caps of Büdenbender '576 of a plastic material in the first place and then attempting to provide such plastic caps with a metal insert to preclude damage by corrosive liquid carried in the container. Unlike the examiner, it is our view that the recitations in appellant's claim 7 regarding 1) the transport and storage of corrosive liquids and 2) the protection of the plastic cap of the container by the disk-shaped metal insert against corrosive liquid in the

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container, are more than merely statements of intended use. These recitations are necessary to define appellant's invention and they bring life and meaning to the claimed subject matter.

Absent the disclosure of the present application, it is our opinion that one of ordinary skill in the art wouldnot have been motivated to modify the container and metal cap arrangement of Büdenbender '576 in light of the closure member of Hawkins so as to arrive at the subject matter set forth in appellant's claims 7 and 8 on appeal. Thus, the examiner's rejection of appellant's claims 7 and 8 under 35 U.S.C. § 103 based on Büdenbender '576 and Hawkins will not be sustained.

We have also reviewed the patent to Mineo applied by the examiner in the § 103 rejection of dependent claim 9. However, we find nothing in this reference which would supply that which we have noted above to be lacking in the basic combination of Büdenbender '576 and Hawkins. Accordingly, the examiner's rejection of claim 9 on appeal under 35 U.S.C. § 103 will likewise not be sustained.

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As should be apparent from the foregoing, the decision of the examiner rejecting claims 7 through 9 of the present application is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
HARRISON E. McCANDLISH)	APPEALS AND
Senior Administrative Patent Judge)	INTERFERENCES
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)	
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	

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